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Via ECF and Federal Express

March 17, 2013

The Honorable Nina Gershon
United States District Judge
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Motion in Limine - *United States v. Gustave Drivas, et al.*, 10-CR-771 (S-1) (NG)

Dear Judge Gershon:

Yelena Galper respectfully moves *in Limine* to preclude the government from introducing certain summary charts into evidence on the grounds that the charts' subject headings suggest that the government has proved an ultimate fact at issue. We do not object to the substance of the charts, summaries of bank records already in evidence, but the titles of the charts, which the government seeks to admit into evidence, suggest the jury accept a conclusion the government must prove beyond a reasonable doubt, and which Ms. Galper vigorously disputes.

Specifically, we oppose the following titles of the summary charts:

- "Withdrawals from Yelena Galper Companies"; *See* Gov't Exs. 11-K, 11K-i, 11-Kii (attached as Exhibit A to this letter);
- "Payments" or "Withdrawals" to or from "Yelena Galper and Companies"; *See* Gov't Exs. 11-J, 11-L, 11-M (attached as Exhibit B to this letter);
- "Yelena Galper – Companies and Bank Accounts"; *See* Gov't Ex. 30-E (attached as Exhibit C to this letter).

The charts attached to this letter as Exhibit A plainly present the "danger of unfair prejudice, confusion of the issues . . . misleading the jury [as well as] undue delay, waste of time or needless presentation of cumulative evidence." Fed. R. Evid. 403. Indeed, the very heart of our

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defense in this case is that these companies *were not* Yelena Galper's. Similarly, the charts attached to this letter as Exhibit B suggest payments or withdrawals were made by Yelena Galper where our defense is that those transactions were made by Larisa Shelabodova or her co-conspirators. The chart attached to this letter as Exhibit C, although somewhat less suggestive than those in Exhibits A and B, still suggest to the jury that the companies and bank accounts were Yelena Galper's, which, as a factual matter, even the government would be forced to concede is false since Yelena Galper did not incorporate or control those companies. Larisa Shelabodova also has admitted to using these accounts' debit cards for personal purchases. To characterize the accounts as "Yelena Galper Companies" is highly prejudicial and erroneous.

In an attempt to avoid unnecessary motion practice, I raised my objections to government exhibits 11-J, 11-K, 11-L, 11-M, and 30-E, with Sarah Hall, who responded that she would work with us in order to avoid unnecessary motion practice. Earlier today, we received two new summary charts government exhibits 11K-i and 11K-ii, which bear the highly offensive "Yelena Galper Companies" title.

It is axiomatic that a chart submitted by the prosecution is a very persuasive and powerful tool. Its contents must be presented fairly to the jury. Here, by its arrangement and use, the government attempts to use the charts as adverse witnesses without providing the defense with the opportunity to cross-examine. A chart which for any reason presents an unfair picture can be a potent weapon for harm, and permitting jury to consider it is error. *United States v. Conlin*, 551 F.2d 534, 538-539 (2d Cir. 1977) (citations omitted).

In this case, the court should deny the admissibility of the Government's summary charts as they are currently titled, because the titles incorporate faulty assumptions of facts with which *the jury* is charged with deciding. The government can present the same summary evidence without including Yelena Galper in the title, *i.e.* "Withdrawals by MT Billing, YB Medical Supply, and YG Best Advertising" or "Payments to Chase Accounts of MT Billing, YB Medical Supply, YG Best Advertising, and Yelena Galper."

Respectfully submitted,

/S/ Eric M. Creizman

Eric M. Creizman

Caroline J. Polisi

cc: Sarah Hall, Esq. (via ECF)
Trial Attorney, Department of Justice

William P. Campos, Esq. (via ECF)
Assistant United States Attorney

All Defense Counsel (via ECF)